

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

FILED	
DATE: 5-12-2011	4:08 O'Clock P.M.
Sandra K Markham, Clerk	
BY: T. Brogdon	
Deputy	

DIVISION PRO TEM B

SANDRA K MARKHAM, CLERK

HON. WARREN R. DARROW

BY: T. Brogdon, Deputy Clerk

CASE NO. V1300CR201080049

DATE: May 12, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney

By Sheila Polk

Bill Hughes

(Via OnBase)

(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly

(Via Electronic Mail)

(For Defendant)

(Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP

(Via Electronic Mail)

(For Defendant *Pro Hac Vice*)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

JURY TRIAL – DAY 42

Mina Hunt

START TIME: 9:08 a.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Counsel for Defendant

Luis Li, *Pro Hac Vice* Counsel for Defendant

Miriam Seifter, *Pro Hac Vice* Counsel for Defendant

The Court, Counsel, Detective Diskin, and Defendant are present in the Courtroom. The Jury is not present.

Court and Counsel discuss witness testimony, February 22, 2011 minute entry, Rule 406, 403 considerations, and Counsel for Plaintiff's witness list. Counsel argue their positions with regard to character testimony by Jennie Brown. Counsel for Defendant requests the Court enforce its February 22<sup>nd</sup> ruling and not allow this witness to testify today. Discussion ensues regarding character issues.

Counsel for Defendant asserts their clients constitutional rights and submits the issue to the Court. Counsel for Defendant requests Ms. Brown not be able to testify, Counsel for Plaintiff put in writing as proffer as to the purpose of her testimony, and to settle this issue during the break without waiving any objection to Ms. Brown's testimony.

Court and Counsel discuss background information. The Court advises it is not going to permit the testimony today. If Counsel for Defendant will not stipulate to identification of signatures, that would be permitted for the issue of foundation.

~~~Recess~~~

At 9:33 a.m. Court reconvenes, all previously appearing parties and the Jury is present.

Frank Barbaro having been previously sworn resumes testimony.

Frank Barbaro is reminded of the Rule for the exclusion of witnesses and excused subject to recall.

~~~Recess~~~

At 10:46 a.m. Court reconvenes, all previously appearing parties and the Jury is present.

Sarah Mercer is sworn and testifies.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

A question for the Court is submitted by the Jury and answered.

The Jury is reminded of the admonition; Sarah Mercer is advised of the Rule for the exclusion of witnesses, excused for the noon recess and exits the Courtroom.

Court and Counsel discuss disclosure, and witness testimony. The Court advises Counsel for Plaintiff can ask about 2008, not in a leading fashion and would have to be direct observations.

Counsel for Defendant requests Counsel for Plaintiff's witness list. Discussion ensues.

Court and Counsel discuss exhibits 401, 406, 410, and 993-995. Counsel stipulates to the signatures on the documents.

~~~Noon Recess~~~

At 1:24 p.m. Court reconvenes, all previously appearing parties are present. The Jury is not present

During the noon recess the Court reviewed exhibits 993-995. The Court discusses the reviewed exhibits and advises a ruling was made on this on January 13, 2011 and without the testimony suggested, the evidence that is admissible is as stated and includes the revision mentioned which is the amounts paid by people for JRI seminars attended.

Court and Counsel discuss exhibit 995, bates #6649. The Court advises this would be admissible.

Court and Counsel discuss proposed questions relating to 2008 incidents, foundational and causation issues, and witness testimony. The Court advises if there is going to be testimony about observations, that is appropriate.

Counsel for Defendant requests the Court consider in terms of causation a lay witnesses perception as to what he/she observes in 2008 may somehow be related to a medical opinion provided by a witness as to the cause of death.

~~~Recess~~~

At 1:43 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Sarah Mercer resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition; Sarah Mercer is reminded of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 3:16 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Sarah Mercer resumes testimony.

Sarah Mercer is reminded of the Rule for the exclusion of witnesses and excused subject to recall.

The Jury is reminded of the admonition, excused for the extended recess and advised the Trial will resume May 26, 2011 at 9:15 a.m.

The Court stands adjourned for the day.

**END TIME: 4:08 p.m.**

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel for Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel for KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Camp Verde Superior Court Building